In the

United States Court of Appeals

For the Seventh Circuit

No. 81-1405

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

NICK BOULAHANIS and DONALD SCALISE,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 80-CR-408—George N. Leighton, *Judge.*

ARGUED APRIL 1, 1982—DECIDED MAY 6, 1982

Before ESCHBACH, *Circuit Judge,* NICHOLS, *Associate Judge,** and POSNER, *Circuit Judge.*

POSNER, *Circuit Judge.* Nick Boulahanis and Donald Scalise appeal from their conviction on one count of violating the Hobbs Act, 18 U.S.C. § 1951, and one count of violating 18 U.S.C. § 894 (extortionate collection of extensions of credit).

Nick Velentzas owned the Hellenic Social Club in Chicago. Men, mostly of Greek extraction, would come there to talk, drink coffee, play cards, and shoot dice—and gamble. One night the appellants showed up in the

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* Of the United States Court of Claims.

company of Frank Renella. They proceeded to beat up Velentzas, and one of the appellants also smashed a lot of furniture. Velentzas went the next day to the FBI, who equipped him with a recording device which he strapped to his ankle. That night the appellants and Renella reappeared and had a conversation with Velentzas (outside the club) that was taped by the recording device. In this conversation, which was played to the jury, the appellants and Renella told Velentzas in language free from any shade of ambiguity that if he did not pay them $300 for the past month and $500 per month thereafter for allowing gambling in the club they would shut it down, while if he did pay they would not only "terrorize nobody more in here" but would beat up anyone else who was trying to extort money from Velentzas.

Several days later, Renella turned himself in to the FBI and made statements incriminating himself and one of the appellants. He was indicted along with both appellants and all three were scheduled to be tried together. Prior to trial Renella moved to suppress his statements and at the suppression hearing it emerged that he was a former FBI informant. Shortly after this bombshell exploded, Renella disappeared. The appellants moved to sever his trial from theirs. The government opposed the motion; it wanted to try Renella *in absentia* along with the appellants. Before acting on the motion the court conducted a hearing into the circumstances of Renella's employment as a government informant. The hearing revealed that Renella had been dropped as an informant three years earlier (though without being told of the fact). Since then he had had intermittent contacts with the FBI, culminating in the meeting in which he turned himself in, but he had not returned to the government payroll or passed information to the government beyond what anyone who found himself in a criminal scrape might pass in an effort to get more lenient treatment for himself. He had not given the government any information about the appellants' defense tactics or planning.

The district court granted the motion to sever Renella's trial from the appellants' and also the motion

to suppress Renella's statements. The appellants argue that this was not good enough; that the planting of a government informant in the defense camp was so reprehensible that nothing short of dismissal of the case with prejudice will remove this ugly stain from the Justice Department's escutcheon. We disagree with this characterization of the government's conduct. Hiring a criminal as an informant does not create an indissoluble lifetime bond between him and the government. When Renella ceased to be an informant the government could treat him like any other criminal, and indict and try him with his confederates if that was otherwise the proper procedure in the circumstances. Of course if while under indictment Renella had decided to try to revive his relationship with the FBI and had come to them with an offer to spy on his codefendants in exchange for money or leniency, the FBI would have been guilty of serious misconduct in accepting the offer. Since there is no evidence this happened, we need not speculate on what (if any) further sanction for such misconduct would be appropriate, beyond suppression of the fruits of the improper spying.

Another procedural issue has to do with the admission into evidence at the appellants' trial of the grand jury testimony of James Chiampas, who was present at the Hellenic Social Club on both of the crucial nights. He was scheduled to testify for the prosecution, but before the trial began he told the government that he would not testify because he was afraid of being killed. Velentzas had been murdered by persons unknown and Renella had fled, perhaps because of fear for his own life. Chiampas was nevertheless subpoenaed to appear at trial and he did appear, but he refused to answer ary questions though ordered twice to do so by the judge; he explained that he was afraid for his life. He was then excused and the government offered in evidence his grand jury transcript. The court admitted it, and it was read to the jury. In it Chiampas described the fight and also stated that the appellants had returned the next night and gone outside with Velentzas.

The appellants contend that the admission of the grand jury transcript into evidence violated both the

Federal Rules of Evidence and the Sixth Amendment, since a transcript cannot be cross-examined. Rule 804(a)(2) of the Federal Rules of Evidence allows a hearsay statement to be admitted only (so far as is relevant here) if the declarant "persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so . . . ." The appellants contend that Chiampas' persistence was not adequately tested because the district judge did not threaten him with contempt. But Chiampas was accompanied by counsel who must have explained to him the possible consequences of failing to testify. And since Chiampas' testimony, as we are about to see, was not vital to the government's case, it would have been needless cruelty for the court to have put Chiampas to a choice between going to jail and running the risk of meeting Velentzas' fate.

But persistence of a witness in failing to testify is only a necessary and not a sufficient condition for admitting a hearsay statement. Since grand jury transcripts do not come within one of the specific hearsay exceptions in Rule 804, they are admissible if at all only under the stringent criteria of 804(b)(5), the catch-all provision which requires, so far as is relevant here, both "circumstantial guarantees of trustworthiness" equivalent to those of hearsay statements within the specified exceptions and that the statement be "more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts." We think these conditions were also satisfied, though the first more clearly than the second. Chiampas had testified before the grand jury under oath of course, and hence subject to being prosecuted if he perjured himself, but also, so far as appears, without having been pressured to testify. It is conceded that he was a disinterested witness—a mere bystander, with no axe to grind. And his testimony was corroborated at every point by the tape of the conversation, and on most points by testimony of eyewitnesses as well, including Scalise. The government stresses the corroboration but of course that undermines the second condition of admission, that the hearsay declaration be the most probative possible evidence. The government points out that at the time

Chiampas' transcript was offered in evidence there was no other direct evidence that the appellants had been present at the fight, though it could be readily inferred from the tape, and says this was an essential part of its case. It was not. The tape provided all the evidence the government needed to show extortion by the appellants.

But Rule 804 does not require that hearsay evidence be essential in order that it be admissible. It is enough that it is the most probative evidence reasonably available on a material issue in the case. It was material though not essential for the government to show that the appellants had beaten up Velentzas the night before the taped conversation; it was further evidence that the transaction discussed in the taped conversation was extortionate and not, as the appellants tried to show at the trial, a normal business transaction. And at the time that Chiampas' grand jury testimony was read into evidence the government had no other direct evidence that it was the appellants who together with Renella beat up Velentzas. It is true that later in the trial Scalise admitted his participation in the fight, but at the time Chiampas' testimony was introduced the government did not know that Scalise would so testify.

In these circumstances the introduction of the grand jury transcript complied with the requirements of Rule 804 as interpreted in *United States v. Carlson*, 547 F.2d 1346, 1354-55 (8th Cir. 1976), and even, we think, as more narrowly intrepreted in *United States v. Thevis*, 665 F.2d 616, 629 (5th Cir. 1982). And it did not violate the confrontation clause of the Sixth Amendment. Any use of hearsay testimony denies the defendant an opportunity to confront a witness against him, unless the hearsay declarant is available to be cross-examined as Chiampas was not. But this court, following the influential plurality opinion in *Dutton v. Evans*, 400 U.S. 74 (1970), has been unwilling to hold that the admission of hearsay evidence is a per se violation of the confrontation clause of the Sixth Amendment. We deem hearsay (constitutionally) admissible if the witness offering the hearsay testimony is subject to cross-examination and the circumstances under which the hearsay statement was made indicate that its content is probably true. E.g., *Davis v. Franzen*, 671 F.2d 1056, 1058 (7th Cir.

1982). The first requirement, the purpose of which is to assure that the content of the hearsay statement has been accurately reported, is inapplicable in a case such as the present one where a transcript of the statement is offered in evidence and the accuracy of the transcript is not challenged. The second requirement is applicable and satisfied; Chiampas' statement was made voluntarily and under oath and was corroborated by other, highly probative evidence. Its admission did not violate the Sixth Amendment. See *United States v. West*, 574 F.2d 1131, 1136-38 (4th Cir. 1978).

The appellants raise other procedural issues, relating to the sufficiency of the evidence and whether they should have been tried separately rather than together. These issues have no conceivable merit so we move on to the appellants' substantive contentions. The first is that the commerce requirement of the Hobbs Act was not satisfied in this case. The Act, 18 U.S.C. § 1951(a), applies to anyone who by any of the acts forbidden in the statute "in any way or degree obstructs, delays, or affects [interstate or foreign] commerce or the movement of any article or commodity in [interstate or foreign] commerce . . . ." The government argues that the payment of extortion by Velentzas to the appellants depleted or would have depleted the assets that Velentzas had for buying coffee, which was shipped to him from out of state. (It is not entirely clear whether he ever actually paid any money to the appellants, but the statute punishes the attempt along with the completed act, so it is enough if commerce would have been obstructed or affected by the payment that they demanded if it had been paid.) The appellants scoff at this proposition by pointing out that Velentzas' purchases of coffee for the Hellenic Social Club amounted to only about $68 a month, but the statutory language "in any . . . degree" suggests that it would not matter how little coffee Velentzas bought so long as it came from out of state and was affected to any extent by his having to pay extortion to the appellants.

True, the fact that such payment might by depleting Velentzas' assets have reduced his purchases of coffee does not prove that it would have had this effect. But

this court is committed to the view that commerce, within the meaning of section 1951(a), "is affected when an enterprise, which . . . customarily purchases items in interstate commerce, has its assets depleted through extortion, thereby curtailing the victim's *potential* as a purchaser of such goods." *United States v. Elders*, 569 F.2d 1020, 1025 (7th Cir. 1978) (emphasis added). We quoted this language with approval just recently in *United States v. Mattson*, 671 F.2d 1020, 1024 (7th Cir. 1982), and it covers the present case. See also *United States v. DeMet*, 486 F.2d 816, 821-22 (7th Cir. 1973). Although we declined to apply the principle to the facts of *Mattson*, that was because the case involved the extortion of money from an individual rather than a business or other enterprise. It is true that individuals have assets just as businesses do, that the depletion of an individual's assets could affect interstate commerce by causing him to buy less of some good or service which he obtains from out of state, and that the extortion of $3000 from the victim in *Mattson* may have reduced his interstate purchases by more than the payment by Velentzas of $500 a month to the appellants would have reduced his purchases of coffee for the Hellenic Social Club. In general, however, though not in every case, businesses purchase on a larger scale than individuals. Hence extortion is likely to have a greater effect on interstate commerce when directed at businesses than at individuals. That is the pragmatic justification for drawing the line between individuals and businesses or other enterprises so far as applying the depletion-of-assets theory is concerned, and we adhere to that line and reject the appellants' argument.

The last issue in the case is whether there was an extension of credit within the meaning of 18 U.S.C. § 894, of which the appellants were also convicted. The statute punishes the use of extortion to collect or attempt to collect any extension of credit or to punish any person for the nonrepayment thereof. 18 U.S.C. §§ 894(a)(1) and (2). The government's argument that the statute is applicable to this case rests on the following colloquy part of the taped conversation) between Velentzas and Boulahanis:

V: . . . How much I owe you all together?
B: You, you owe me five hundred, now, the 8th of the month. Right now I'm lettin' you go for three hundred, this past month that just passed.
V: Oh, we're starting off with five hundred, now?
B: No, next month.

The government argues that a reasonable jury could infer from this conversation that Velentzas owed the appellants $500 from last month but that the appellants were forgiving $200 of the debt and using extortion to collect the remaining $300. We are willing to accept this interpretation of the conversation but do not see how it shows an extension of credit. All it shows is that Velentzas had (in the view of the appellants, which they coerced Velentzas to accept) defaulted on a payment due the appellants. The extension of credit is a deliberate act by a creditor. It does not occur merely because a customer defaults. Section 894 does not make it a crime to use extortion to collect debts, but only to exact repayment of credit previously extended.

It is true that although the appellants and Renella evidently beat up Velentzas and smashed his furniture because he had not paid them on time, they did not collect the money due them until the next night, the night of the taped conversation. If the previous night they had given him additional time to pay, that would have been an agreement to defer payment of a debt, and such a deferral would be within the reach of section 894. See *United States v. Annerino*, 495 F.2d 1159, 1166 (7th Cir. 1974); *United States v. Horton*, Nos. 81-1155, 81-1489, 81-1178, slip op. at 10 (7th Cir. Apr. 29, 1982). But there is no evidence of such an agreement, and if perhaps it can be inferred from the circumstances still we do not think the government met its burden of proof beyond a reasonable doubt. As mentioned, the theory of the extension of credit that the government actually pressed in this case was different, and untenable.

The appellants should therefore have been acquitted on the second count; and although their sentences on count two were made to run concurrently with those on count one, it is possible that the sentences on count one

were influenced by the district judge's belief that the appellants had violated section 894 as well as section 1951. We do not mean to imply that the trial judge *must* reduce the sentence imposed. We merely remand to permit the trial judge to consider whether, under all of the information available to him including the presentence investigation report, the same or some lesser sentence should be imposed.

The appellants' convictions on count one are affirmed, their convictions on count two are reversed, and the case is remanded for entry of judgments of acquittal on count two and for resentencing on count one.

SO ORDERED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

June 15, 1982

Before

Hon. Jesse E. Eschbach, Circuit Judge
Hon. Philip Nichols, Jr., Associate Judge*
Hon. Richard A. Posner, Circuit Judge

United States of America,
Plaintiff-Appellee,

No. 81-1405 *vs.*

Nick Boulahanis and
Donald Scalise,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 80-CR-406
George N. Leighton, Judge.

ORDER

On June 2, 1982, Nick Boulahanis and Donald Scalise filed a petition for rehearing with suggestion for rehearing en banc. All of the judges of the original panel have voted to deny the petition, and none of the active members of the court has requested a vote on the petition. The petition is therefore DENIED.

* Of the United States Court of Claims.

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

(As amended Oct. 31, 1951, c. 655 § 17b, 65 Stat. 717.)

§ 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a

State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant—

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of his statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), his attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.

(3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the

other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) **Other exceptions.** A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

(As amended Pub.L. 94-149, § 1(12), (13), Dec. 12, 1975, 89 Stat. 806.)

AMENDMENT [VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

(Ratified December 15, 1791.)

Filed Jul 23 1980

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division

United States of America *vs.* Frank Renella, Nick Boulahanis, and Donald Scalise	No. Violation: Title 18, United States Code, Sections 1951, 894 and 2

The SPECIAL SEPTEMBER 1978 GRAND JURY charges:

1. At all times material hereto, Eleftherios (Nick) Velentzas was the proprietor of the Hellenic Social Club, 5941 West Fullerton Avenue, Chicago, Illinois.

2. At all times material hereto, Eleftherios (Nick) Velentzas was engaged in the business of buying and selling coffee within the State of Illinois.

3. At all times material hereto, Eleftherios (Nick) Velentzas intended to purchase and did purchase coffee produced outside the State of Illinois, which coffee moved in interstate commerce from outside the State of Illinois to within the State of Illinois and was used by Eleftherios (Nick) Velentzas and the Hellenic Social Club.

4. That from in or about November, 1978, to on or about June 13, 1979, the exact dates being unknown to the grand jury, within the Northern District of Illinois, Eastern Division,

FRANK RENELLA,
NICK BOULAHANIS, and
DONALD SCALISE,

the defendants herein, did knowingly, willfully, and unlawfully obstruct, delay, and affect commerce, as that term is defined in

Title 18, United States Code, Section 1951, and the movement of articles in commerce, that is, coffee, by extortion, as that term is defined in Title 18, United States Code, Section 1951, in that the defendants did unlawfully obtain from Eleftherios (Nick) Veneltzas and the Hellenic Social Club property, that is, approximately $2,100.00 in money, which property was not due and owing the defendants but was obtained from Eleftherios (Nick) Velentzas with his consent, said consent being induced by the defendants' wrongful use of actual and threatened force and violence and fear of economic harm.

All in violation of Title 18, United States Code, 1951 and 2.

COUNT TWO

The SPECIAL SEPTEMBER 1978 GRAND JURY further charges:

1. Paragraphs one through three of Count One of this Indictment are incorporated herein by reference and thereby made a part of this Count.

2. That from on or about June 8, 1979, up to on or about June 13, 1979, in the Northern District of Illinois, Eastern Division,

FRANK RENELLA,
NICK BOULAHANIS, and
DONALD SCALISE,

the defendants herein, did unlawfully, willfully, and knowingly participate in the use of extortionate means within the meaning of Section 891(7) of Title 18, United States Code, to collect and attempt to collect from Eleftherios (Nick) Velentzas an extension of credit, that is, the defendants Frank Renella, Nick Boulahanis, and Donald Scalise, did unlawfully, willfully, and knowingly use and expressly and implicitly threaten to use violence to cause harm to the person, reputation, and property of Eleftherios (Nick) Velentzas, to collect and attempt to collect from said Eleftherios (Nick) Velentzas an extension of credit, in violation of Title 18, United States Code, Sections 894 and 2.

A TRUE BILL:

/s/ Steve J. Prokopyko
Foreman

/s/ Beverly Susler Parkhurst
Acting United States Attorney

[722] *** decide that question from all of the evidence considered by you, as you will be instructed.

With that admonition, you proceed now and have Miss Williams read this transcript.

BY MR. JOHNSON:

Q. Will you begin, ma'am.

(Grand Jury transcript read by the witness as follows:)

BY THE WITNESS: Before the Federal Grand Jury. Special September, 1978 Grand Jury, September 26, 1979, 2:00 o'clock p.m.

Jim Chiampas, having been first duly sworn by the Foreman to testify the truth, the whole truth and nothing but the whole truth, was examined and testified as follows:

Examination by Mr. Johnson:

Q. Would you please state your full name.

A. Jim Chiampas.

Q. And that is spelled C-h-i-a-m- —

A. C-h-i-a-m-p-a-s.

Q. Where do you live, Mr. Chiampas?

A. 2642 North Harlem, Elmwood Park.

Q. Mr. Chiampas, are you familiar with a place known as the Hellenic Social Club?

[723] A. Yes, I am.

Q. Have you ever been there?

A. Yes, sir.

Q. On more than one occasion?

A. Yes, sir.

Q. I want to direct your attention to June of this year and, in particular, to an evening of Tuesday night, June 12, 1979. Were you there that evening, Mr. Chiampas?

A. Yes, sir.

Q. Were there other people there like yourself?

A. Yes, sir.

Q. This is a Greek coffee shop?

A. Yes, sir.

Q. And people can eat sandwiches and drink coffee?

A. Yes, sir.

Q. Most of the people that patronize the club are Greek individuals?

A. Yes, sir.

Q. Do you recall anything unusual that you saw happen that night on June 12?

A. Yes.

Q. Would you tell us what you saw?

A. Well, I saw three men walk in and they had a fight with the owner of the coffee shop.

[724] Q. And you know that to be Nick Velentzas?

A. Yes, sir.

Q. Your testimony is that three men came in, is that correct?

A. Yes, sir.

Q. Could you tell us briefly what you saw each of the three men do?

A. Two walked up to Nick and they had a fight and one was standing by the door.

Q. I want to show you Grand Jury Exhibit No. 2 with the date of August 8, 1979.

Sir, do you recognize that photograph?

A. Yes.

Q. Is this a photograph of one of the three men you saw that evening?

A. Yes, sir.

Q. Which man was that?

A. He was standing by the door."

MR. JOHNSON: Now, Your Honor, at this time I would ask to show the Jury what was marked as Grand Jury Exhibit No. 2.

THE COURT: You may.

MR. JOHNSON: You may.

(Government's Exhibit 2 [725] published to the Jury.)

BY MR. JOHNSON:

Q. Would you continue, please, with the transcript.

BY THE WITNESS:

"BY MR. JOHNSON:

Q. I want to show you what previously has been designated as Grand Jury Exhibit No. 1 with a date of August 8, 1979. Do you recognize that photograph?

A. Yes.

Q. Who do you recognize that to be?

A. That's the one that hauled Nick.

Q. That is the one that what?

A. That's the one that hauled Nick from the back.

Q. Okay. You saw he hauled Nick from the back. Could you describe first what you saw this man do?

A. Actually, Nick kicked one of the guys and this guy grabbed him so the other guy hit him."

MR. JOHNSON: At this time in the transcript another Exhibit was shown to the witness. May I show this to the Jury at this time, Your Honor?

THE COURT: You may.

MR. JOHNSON: Exhibit No. 1.

THE COURT: You may.

MR. JOHNSON: Thank you.

[726] (Government's Exhibit 1 was published to the Jury.)

MR. JOHNSON: Thank you.

BY MR. JOHNSON:

Q. Miss Williams, will you continue with the transcripts please.

BY THE WITNESS:

A. "BY MR. JOHNSON:

"Q. Where did you see Frank grab Nick?

A. In the neck.

Q. He grabbed him with his arm around the neck?

A. Right.

Q. Your testimony is you saw the third individual hit Nick, is that correct?

A. Right.

Q. Where did he hit Nick?

A. In the stomach.

Q. What did he hit him with?

A. His hand.

Q. With his fist?

A. Right.

Q. I want to show you what has previously been marked Grand Jury Exhibit No. 3 with a date of August 8, 1979 and ask you if you recognize that photograph.

[727] A. Yes.

Q. Who do you recognize that to be, Mr. Chiampas?

A. The one that hit Nick.

Q. The one that hit him with his fist in the stomach?

A. Right.

Q. This is the third individual?

A. (Nodding affirmatively.)

Q. You have to make a response for the Court Reporter.

A. Yes, sir."

MR. JOHNSON: At this time I would like to show that Grand Jury Exhibit No. 3 to the members of the Jury.

THE COURT: You may.

MR. JOHNSON: Thank you.

(Government's Exhibit No. 3 was published to the Jury.)

MR. JOHNSON: Thank you.

BY MR. JOHNSON:

Q. Would you continue with the transcript, ma'am.

A. (Reading):

"Q. What happened after Frank and Nick Boulahanis started to beat up on Nick Velentzas?

A. Threw the one outside.

Q. Who went outside?

[728] A. Nick and those guys.

Q. So the owner, Nick Velentzas, and the three men went outside?

A. Right.

Q. Where did you go, Mr. Chiampas?

A. I was inside.

Q. Did there come a time when you went outside?

A. Yes, sir.

Q. And what did you see when you were outside?

A. When I was outside, I seen Nick and then Nick went inside, so from then I left.

Q. Okay. When you were outside, you did not go back in again?

A. No.

Q. While you were outside, did you hear any noise?

A. Yes.

Q. What did you hear, sir?

A. Noise. I don't know what, something break, but I don't know what. I can't tell what.

Q. You heard something break within Nick's coffee shop?

A. Right.

Q. But you do not know what that was?

A. No.

[729] Q. Were you afraid at all during this time, Mr. Chiampas?

A. I was kind of shook up, sure.

Q. Were other people afraid as well?

A. I think so. They're all human beings. I guess so, if they feel the way I did.

Q. The next night, June 13th, did you have occasion to also be at the social club?

A. Yes, sir.

Q. You were there during the evening again?

A. About 7:00 o'clock.

Q. The three men that you have identified, did you have occasion to see any of those three men the next night?

A. Yes, the two.

Q. I will put the three photographs out and you pick the two that you saw the next night.

A. Those two."

MR. JOHNSON: May I show those two Exhibits that Mr. Chiampas identified to the Jury?

THE COURT: You may.

MR. JOHNSON: I will simply hold them up, Your Honor, to save time.

BY MR. JOHNSON:

Q. Would you continue, please, with the transcript.

[730] A.

"Q. What did you see these two men do the next night?

A. Walk in and Nick took them outside.

Q. So you saw them walk into the club, they met with Nick, the owner?

A. Right, outside the store.

Q. And they went outside the store?

A. Right.

Q. You did not go outside the store?

A. No.

Q. So you don't know what happened outside?

A. Right.

Q. I want to show you what has previously been marked Grand Jury Exhibit No. 6 with a date of August 8, 1979. Would you look at this photograph and tell us if you can identify that individual.

A. Yes. That is the owner of the coffee shop.

Q. That is Nick Velentzas?

A. Right."

MR. JOHNSON: May I show that photograph to the Jury?

THE COURT: You may.

MR. JOHNSON: Iwill simply hold it up.

THE COURT: All right.

[731] (Government's Exhibit No. 6 was published to the Jury.)

MR. GENSON: May I see it?

BY MR. JOHNSON:

Q. Would you continue with the transcript, Miss Williams, please.

A.

"Q. Mr. Chiampas, the man that you said you saw at the door, do you remember telling the FBI that you heard him shout 'everyone stay in your seats"?

A. Yes.

Q. And he said that while he stood in the doorway?

Q. That was the first night.

Q. The first night?

A. Right.

Q. And it was the other two men that you saw beat up Nick Velentzas?

A. Right.

MR. JOHNSON: Thank you very much, sir.

THE FOREMAN: You may be excused. Thank you.

(Witness excused.)"

MR. JOHNSON: That concludes the reading of the transcript, Your Honor.

THE COURT: Any questions of Miss Williams from the [732] defense?

MR. GENSON: Just a second, Your Honor.

May we have a sidebar?

(The following sidebar conference was had, out of the hearing of the Jury.)

MR. GENSON: With reference to the reading of the transcript and with reference to the exhibition of pictures, the

defendant Scalise, joined by Mr. Boulahanis, would move for a mistrial. No argument.

THE COURT: How do I know the reason?

MR. GENSON: The reasons are the reasons I suggested in our extensive argument, for the same reasons.

THE COURT: Oh, I see.

MR. GENSON: I am just reasserting it.

THE COURT: The motion will be denied.

MR. GENSON: Thank you.

THE COURT: I see no grounds for a mistrial. All right.

(The following further proceedings were had in the hearing of the Jury.)

MR. JOHNSON: All right. Thank you, Miss Williams.

THE COURT: Thank you, Miss Williams. You are